

HOUSE BILL 181
By Stanley

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 4, to enact the "Guaranteed Energy Cost Savings Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding Sections 2 through 7 of this act as a new part 9.

SECTION 2. This part shall be known and may be cited as the "Guaranteed Energy Cost Savings Act".

SECTION 3. As used in this part, unless the context clearly requires otherwise:

(1) "Energy cost savings measure" means a training program or new facility or existing facility alteration designed to reduce energy consumption or operating costs, or water and other natural resources consumption, and may include one (1) or more of the following:

(A) Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs or systems within the building;

(B) Storm windows or doors, caulking or weather-stripping, multiglazed windows or doors, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(C) Automated or computerized energy control systems, including computer software and technical data licenses;

(D) Heating, ventilating, or air conditioning system modifications or replacements;

(E) Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(F) Indoor air quality improvements;

(G) Energy recovery systems;

(H) Electric systems improvements;

(I) Life safety measures that provide long-term operating cost reductions;

(J) Building operating programs that reduce operating costs;

(K) Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy; or

(L) Water and other natural resources conservation.

(2) "Governmental unit" means a college, university, technical school, legislative body, or other establishment or official of the executive, judicial, or legislative branches of the state authorized by law to enter into contracts, including all local political subdivisions such as counties, municipalities, local education agencies, utility districts, or other special districts.

(3) "Guaranteed energy cost savings contract" means a contract for the implementation of one (1) or more energy cost savings measures.

(4) "Operational cost savings" means expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy cost savings measures.

(6) "Request for proposals" means a negotiated procurement that is announced through a public notice from a governmental unit which will administer the guaranteed energy cost savings contract requesting innovative solutions and proposals for energy conservation measures. The request for proposal shall include the following:

- (A) The name and address of the governmental unit;
- (B) The name, address, title, and phone number of a contact person;
- (C) The date, time, and place where proposals must be received;
- (D) The evaluation criteria for assessing the proposals; and
- (E) Any other stipulation and clarifications the governmental unit may require.

SECTION 4.

(a) A governmental unit may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities in accordance with this part.

(b) All energy cost savings measures shall comply with current local, state, and federal construction and environmental codes and regulations.

(c) Notwithstanding anything to the contrary, a guaranteed energy cost savings contract does not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control, to be returned to the potable water supply.

SECTION 5.

(a) Before entering into a guaranteed energy cost savings contract, a governmental unit shall submit a request for proposals. The governmental unit shall evaluate any proposal from a qualified provider and shall select the qualified provider that best meets the needs of the unit. After reviewing the proposals, the governmental unit may enter into a guaranteed energy cost savings contract with a qualified provider if it finds that the amount it would spend on the energy cost savings measures recommended in the proposal would not exceed the amount of energy or operational cost savings, or both, within a ten (10) year period from the date installation is complete, if the recommendations in the proposal are followed. The governmental unit shall analyze the following:

(1) The estimates of all costs of installation, modifications, or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, and post-installation project monitoring, data collection, and reporting, as well as whether energy consumed or the operating costs, or both, will be reduced; and

(2) The qualifications of the provider.

(b) The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy cost savings contract, of the names of the parties to the proposed contract, and of the purpose of the contract. The public notice shall be made at least ten (10) days prior to the meeting. The meeting shall comply with the provisions of Title 8, Chapter 44.

(c) The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed the costs of the energy cost savings measures within ten (10) years. The qualified provider shall reimburse the governmental unit for any shortfall of

guaranteed energy cost savings on an annual basis. The guaranteed energy cost savings contract may provide for payments over a period of time, not to exceed ten (10) years.

(d) Notwithstanding any law to the contrary, before entering into a guaranteed energy cost savings contract, the governmental unit may require the qualified provider to file with the governmental unit a payment and performance bond relating to the installation of energy cost savings measures that is in an amount the governmental unit finds reasonable and necessary to protect its interests and that may also cover the value of the guaranteed savings on the contract and is conditioned on the faithful execution of the terms of the contract.

(e) A governmental unit, or several governmental units together, may enter into an installment payment contract or lease purchase agreement with a qualified provider for the purchase and installation of energy cost savings measures.

(f) Guaranteed energy cost savings contracts may extend beyond the fiscal year in which they become effective. The governmental unit may include in its annual budget and appropriations measures for each subsequent fiscal year any amounts payable under guaranteed energy savings contracts during that fiscal year.

(g) A governmental unit may use a combination of funds designated for operating, capital expenditures, or other specially designated funds for any guaranteed energy cost savings contract including purchases using installment payment contracts or lease purchase agreements.

(h) State aid and other amounts appropriated for distribution to, or reimbursement to, a governmental unit may not be reduced as a result of energy cost savings realized from a guaranteed energy cost savings contract or a lease purchase agreement for the purchase and installation of energy cost savings measures.

SECTION 6. For governmental units which receive services through the department of general services, this part shall be administered in coordination with the provisions of Sections 4-3-1107 through 4-3-1111.

SECTION 7. This act shall take effect July 1, 2003, the public welfare requiring it.